

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 252B.5(10) and 252H.4(4) and 2010 Iowa Acts, Senate File 2158, section 10, the Department of Human Services proposes to amend Chapter 99, “Support Establishment and Adjustment Services,” Iowa Administrative Code.

The proposed amendments are technical changes to conform the rules to statutory changes regarding the review, adjustment, and modification of court orders for child and medical support. The Child Support Recovery Unit is responsible for periodic review of support orders when the support has been assigned to the state due to the payee’s receipt of public assistance. A parent also has the right to request the review of a support order for which the Unit is currently providing enforcement. The purpose of the review is to determine whether the amount of the support obligation should be adjusted in light of the current child support guidelines and the current circumstances of the parents.

The statutory changes were made to comply with the federal Deficit Reduction Act of 2005, Public Law 109-71, and have already been implemented. Those changes:

- Shortened some waiting periods for review and adjustment. Under the normal review process, the Child Support Recovery Unit must notify the parents of its intent to review the order, collect information from the parents and, after a waiting period, conduct the review and issue a notice of decision on the intended adjustment. The prereview waiting period, for example, has been reduced from 30 days to 15 days.
- Enabled the Child Support Recovery Unit to conduct a review using financial information to which the Unit already has access, notify the parents of the recalculated support amount, and ask if either parent disagrees. This abbreviated method of review is authorized in Iowa Code section 252H.14A as amended by 2010 Iowa Acts, Senate File 2158.

Under either process, the parent has the right to challenge the decision by requesting a second review or requesting a court hearing on the second review decision.

In addition, the proposed amendments to subrules 99.83(5), 99.85(1) and 99.85(3) update references to sections in the reorganized Iowa Code chapter 598. Other amendments are proposed to eliminate unnumbered paragraphs in the rules.

These amendments do not provide for waivers in specified situations because they are technical changes to conform the rules to statutory changes. The rules and Iowa Code chapter 252H already provide for parties’ rights to challenge a review, obtain a second review, or present information to a judge if a party disagrees with the outcome of a review.

Any interested person may make written comments on the proposed amendments on or before November 23, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement 2009 Iowa Code Supplement section 252B.5 as amended by 2010 Iowa Acts, Senate File 2158, section 1, Iowa Code sections 252B.6, 252B.7 and 598.21C(2) and Iowa Code chapter 252H as amended by 2010 Iowa Acts, Senate File 2158.

The following amendments are proposed.

ITEM 1. Amend paragraph **99.62(1)“b”** as follows:

~~b. The right to any ongoing medical support obligation is currently assigned to the state and the support order does not already contain medical support provisions.~~

ITEM 2. Amend paragraph **99.62(3)“b”** as follows:

~~b. Procedures to modify a support order may be initiated when all of the following conditions are met: the order does not include provisions for medical support.~~

~~(1) The order does not include provisions for health insurance coverage or other medical support.~~

~~(2) Health insurance coverage for the children affected by the support order is available at a reasonable cost to the parent required to pay support.~~

~~(3) The children are not otherwise adequately covered under a health benefit plan by the custodial parent or spouse of the custodial parent, excluding coverage under Medicaid.~~

~~For the purpose of this rule, health insurance is considered reasonable in cost if it is employment-related or other group health insurance as specified in Iowa Code section 598.21(4)“a.”~~

ITEM 3. Amend subrules 99.63(2) to 99.63(4) as follows:

99.63(2) Notice of intent to review. One of the following shall apply:

a. At least ~~30~~ 15 days before the review is conducted, the child support recovery unit shall serve notice of its intent to review the order on each parent affected by the child support obligation. This notice shall include a request that the parties complete a financial statement and provide verification of income. The notice shall be served in accordance with Iowa Code section 252B.26 or 252H.15.

b. If the conditions of Iowa Code section 252H.14A(1) as amended by 2010 Iowa Acts, Senate File 2158, section 7, are met, the unit may conduct a review using information accessible to the unit without:

(1) Issuing a notice under paragraph 99.63(2)“a,” or

(2) Requesting additional information from the parent.

99.63(3) Notice of review outcome decision. After the child support recovery unit completes the review of the child support obligation in accordance with rule 441—99.62(252B,252H), the unit shall send issue a notice to the last known address of each parent of decision in accordance with Iowa Code section 252H.14A or 252H.16 stating whether or not an adjustment is appropriate and, if so, the unit’s intent to enter an administrative order for adjustment.

a. and b. No change.

99.63(4) Challenges to outcome of review. Each parent shall be allowed ~~10 days from the date of the notice of decision~~ to submit a written request for a second review challenging this the determination to of the child support recovery unit. The procedure for challenging the determination is as follows:

a. The parent challenging the determination shall submit the request for a second review in writing to the child support recovery unit stating the reasons for the request and providing written evidence necessary to support the challenge. The request must be submitted:

(1) Within 10 days from the date of a notice of decision issued pursuant to Iowa Code section 252H.16, or

(2) Within 30 days from service of a notice of decision issued pursuant to Iowa Code section 252H.14A.

b. and c. No change.

d. ~~If~~ For a review initiated under Iowa Code section 252H.15, if either parent disputes the second decision, the objecting parent may request a court hearing within ~~30~~ 15 days from the date the notice of decision is issued or within 10 days of the date the second notice of decision is issued, whichever is later.

e. For a review initiated under Iowa Code section 252H.14A as amended by 2010 Iowa Acts, Senate File 2158, section 7, either parent may request a court hearing within 10 days of the issuance of the second notice of decision.

f. If the unit receives a timely written request or the unit determines that a court hearing is necessary, the unit shall certify the matter to the district court. An objecting parent may seek recourse by filing a private petition for modification through the district court.

ITEM 4. Amend subrule 99.64(1), introductory paragraph, as follows:

99.64(1) *Financial statements.* ~~Both~~ Except for a review initiated under Iowa Code section 252H.14A as amended by 2010 Iowa Acts, Senate File 2158, section 7, both parents subject to the order to be reviewed shall provide a financial statement and verification of income within ten days of service of the notice of the unit's intent to review the obligation. If a review is initiated under Iowa Code section 252H.14A as amended by 2010 Iowa Acts, Senate File 2158, section 7, and the first notice of decision is challenged as described in subrule 99.63(4), both parents shall be requested to provide a financial statement and verification of income within ten days of the unit's request.

ITEM 5. Amend subrule 99.64(2) as follows:

99.64(2) *Independent sources.* The child support recovery unit may utilize other resources to obtain or confirm information concerning the financial circumstances of the parents subject to the order to be reviewed.

a. These resources include, but are not limited to, the following: the Iowa workforce development department, the Iowa department of revenue, the Internal Revenue Service, the employment, revenue, and child support recovery agencies of other states, and the Social Security Administration.

b. In the absence of other verification of income and deductions allowed under the mandatory support guidelines, the child support recovery unit may estimate the net earned income of a parent for the purpose of determining the amount of support that would be due under the guidelines by deducting 20 percent from the gross earned income confirmed by an independent source. A parent may challenge this estimate by providing verification of actual earned income deductions.

ITEM 6. Amend subrule 99.65(3) as follows:

99.65(3) *Private counsel.* ~~After the notice of intent to review and adjust has been served~~ issued as described in subrule 99.63(2) or 99.63(3), any party may choose to be represented personally by private counsel. Any party who retains private counsel shall notify the child support recovery unit of this fact in writing.

ITEM 7. Amend rule 441—99.66(252B,252H) as follows:

441—99.66(252B,252H) *Medical support.* The child support recovery unit, or its attorney, shall review the medical support provisions contained in any permanent child support order which is subject to review under rule 441—99.65(252B,252H) and shall include in any adjustment order a provision for ~~an employment-related or other group health benefit plan~~ medical support as defined in Iowa Code chapter 252E, and as set forth in 441—Chapter 98, Division I, or other appropriate provisions pertaining to medical support for all children affected directly by the child support order under review.

ITEM 8. Amend subrule 99.67(2) as follows:

99.67(2) *Other documentation.* Supporting financial documentation such as state and federal income tax returns, paycheck stubs, IRS Form W-2, bank statements, and other written evidence of financial status may be disclosed to the court after the notice of intent to review and adjust has been ~~served~~ issued as described in subrule 99.63(2) or 99.63(3), unless otherwise prohibited by state or federal law.

ITEM 9. Amend **441—Chapter 99**, division IV, implementation sentence, as follows:

These rules are intended to implement ~~2009 Iowa Code sections~~ Supplement section 252B.5 to ~~as amended by 2010 Iowa Acts, Senate File 2158, section 1, Iowa Code sections 252B.6, 252B.7 and 598.21(9) 598.21C(2) and Iowa Code chapter 252H as amended by 2010 Iowa Acts, Senate File 2158.~~

ITEM 10. Amend subrule 99.83(5) as follows:

99.83(5) *Noncompliance by minor obligors.* The unit may initiate procedures to modify a support order if a parent requests modification in writing or the unit determines that it is appropriate when:

a. An obligor who is under 18 years of age fails to comply with the requirement to attend parenting classes pursuant to Iowa Code section ~~598.21A~~ 598.21G; or

b. An obligor who is 19 years of age or younger fails to provide proof of compliance with education requirements described in Iowa Code section ~~598.21(4)“e”~~ 598.21B(2)“e”; or

c. The obligor no longer meets the age requirements as defined in Iowa Code section ~~598.21A~~ 598.21B(2) “e” or 598.21(4) “e.” 598.21G.

ITEM 11. Amend subparagraph ~~99.84(1) “b”~~ **(2)** as follows:

(2) If the modification is based on subrules 99.83(1) through 99.83(5), notice shall be provided to each parent. The notice shall be served in accordance with the Iowa Rules of Civil Procedure or Iowa Code section 252B.26 or 252H.19.

ITEM 12. Amend subrules 99.85(1) and 99.85(3) as follows:

99.85(1) *Financial statements.* Parents subject to the order shall provide a financial statement and verification of income within ten days of a written request by the unit.

a. If the modification action is based on a substantial change of circumstances;

(1) ~~the~~ The requesting party must provide Form 470-2749, Request to Modify a Child Support Order, and documentation that proves the amount of change in net income and the date the change took place, such as:

(1) 1. Copies of state and federal income tax returns, W-2 statements, or pay stubs, or

(2) 2. A signed statement from an employer or other source of income.

(2) The unit shall review the request and documentation. If appropriate, the unit shall issue to each parent a notice of intent to modify the order as stated in subrule 99.84(1) and a financial statement. Each parent shall complete and sign the financial statement and return it to the unit with verification of income and deductions as described in subrule 99.1(3).

b. ~~If the modification action is based on addition of a child; changing reserved, zero-dollar amount, or medical-provisions-only obligations; making a correction (if financial information is needed); or noncompliance by a minor obligor, as defined in Iowa Code section 598.21A or 598.21(4) “e,” the~~ The unit may require a completed and signed financial statement and verification of income from each parent as described in subrule 99.1(3)- if the modification is based on:

(1) Addition of a child;

(2) Changing a reserved or zero-dollar-amount obligation;

(3) Changing a medical-provisions-only obligation;

(4) Making a correction (if financial information is needed); or

(5) Noncompliance by a minor obligor as defined in Iowa Code section 598.21B(2) “e” or 598.21G,

(1) c. The unit may also request that a parent requesting a modification provide an affidavit regarding the financial circumstances of the nonrequesting parent when the unit is otherwise unable to obtain financial information concerning the nonrequesting parent. The requesting parent shall complete the affidavit if the parent possesses sufficient information to do so.

(2) d. The unit may also use the most recent wage rate information published by the department of workforce development or the median income for parents on the unit caseload to estimate the net earned income of a parent when a parent has failed to return a completed financial statement when requested and complete and accurate information is not readily available from other sources.

(3) e. Self-employment income will be determined as described in subrule 99.1(5).

99.85(3) *Guidelines calculations.*

a. The unit shall determine:

(1) ~~the~~ The appropriate amount of the child support obligation (excluding cost-of-living alteration amounts) as described in rules 441—99.1(234,252B) through 441—99.5(234,252B), and ~~shall determine~~

(2) ~~medical~~ Medical support provisions as described in Iowa Code chapter 252E and rules 441—98.1(252E) through 441—98.7(252E).

b. If the modification action is due to noncompliance by a minor obligor, as defined in Iowa Code section ~~598.21A~~ 598.21B(2) “e” or 598.21(4) “e.” 598.21G, the unit will impute an income to the obligor equal to a 40-hour workweek at the state minimum wage, unless the parent’s education, experience, or actual earnings justify a higher income.

ITEM 13. Amend rule 441—99.87(252H) as follows:

441—99.87(252H) Voluntary reduction of income.

99.87(1) The unit shall not modify the support order based on a substantial change of circumstances if a change in income is:

a. ~~due~~ Due to a voluntary reduction in net monthly income attributable to the actions of the party,
or is

b. ~~due~~ Due to any material misrepresentation of fact concerning any financial information submitted to the child support recovery unit.

99.87(2) The unit may request verification that a loss of employment was not voluntary or that all facts concerning financial information are true. Verification may include, but is not limited to, a statement from the employer, a doctor, or other person with knowledge of the situation.

ITEM 14. Amend **441—Chapter 99**, division V, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 252H as amended by 2010 Iowa Acts, Senate File 2158.